

# **Drafter Comments on LCpro1**

(unedited)

prepared for the  
Pro Se Subcommittee of the  
Law and Justice Interim Committee

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## **Purpose**

This paper provides a section-by-section discussion of the language used in drafting the bill (LCpro1) requested by the Pro Se Subcommittee of the Law and Justice Interim Committee (LJIC). It is intended to be used side-by-side with the LCpro1 bill draft.

## **Section-by-section discussion of the bill draft**

### Title.

There is a substantial body of case law concerning titles. It is the bill drafter's responsibility to ensure that the title is drafted appropriately. The title should contain only one subject. Any provision in the act that is not reflected in the title may be void.

### Section 1: Short title.

A short title enables quick future identification of new law in a definable area.

### Section 2: Purpose.

A purpose section should thoughtfully describe intent. Purpose language may be referred to by the courts to interpret unclear or ambiguous language. In the sample bill draft (provided to the Subcommittee by the Pro Se working groups of stakeholders, the purpose language was very broad. The section was redrafted to specifically articulate legislative staff's understanding of the purposes contemplated by the subcommittee. The Subcommittee should carefully review this language to ensure it reflects an accurate interpretation of intent.

### Section 3: Definitions.

A definition section is used to avoid repetition and ensure clarity. "Self-represented litigant" was defined to give an exact meaning to the phrase and thus avoid contrary interpretation of the terminology. To allow for the use of "court" in this bill draft in a context broader than the Supreme Court, "court" was not defined as proposed in the sample bill. Rather, "supreme court" is used in the bill draft when appropriate and "court" is used when the context is broader than the supreme court.

#### Section 4. Self-help law program.

Subsection (1) establishes the program and states that the program and staffing is to be provided for within available funding. Subsection (2) provides that the program staff are subject to the judicial branch pay plan. Subsection (3) lists the basic components of the program. Subsection (4) provides for the self-help law program to coordinate with other programs. References in the sample bill to only Montana "residents" and a "pro bono program" were removed. The subcommittee should carefully review these changes and this language to ensure this section is consistent with the subcommittee's intent.

#### Section 5. Procedures -- data -- reports.

This section is essentially and implementation sections that requires the supreme court to (1) establish procedures, (2) ensure data is collected, and (3) report to the legislature.

#### Section 6. Appropriation.

This section provides the money to the supreme court from the general fund. The amounts are blank pending additional fiscal analysis. This section means that the bill is a "cat and dog" bill that would be added to the budget later in the legislative session. In other words, this bill assumes that the money for this program would not be provided for in HB 2. Because this is not an on-going statutory appropriation (statutory appropriations do not get reviewed by the legislature each session), if the bill is passed and approved, future funding for this program would need to be included in the Supreme Court's budget request and, after the 2007-2008 biennium, included in HB 2.

#### Section 7. Codification.

Sections 1 through 5 are to be codified in chapter 1 (general provisions) of Title 3 (Judiciary, Courts). Codification means that only sections 1 through 5 will appear in the Montana Codes Annotated.

#### Effective dates.

A special effective date is not specified in the bill. As provided in section 1-2-201, MCA, the appropriation section would be effective July 1, 2007, and the other sections would be effective October 1, 2007.

#### Miscellaneous notes.

This bill draft will receive an official LC number only after the full LJIC has passed a motion to formally request the bill as a committee bill. After it has an official LC number and the LJIC has approved a final draft, the bill will be put into the formal bill draft review process, which includes editing and legal review.

**Unofficial Draft Copy**

As of: March 15, 2006 (10:50am)

LCpro1

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the Law and Justice Interim Committee

A Bill for an Act entitled: "An Act creating the Montana access to civil justice act; directing the supreme court to establish a self-help law program within appropriated funding; specifying purposes, definitions, and duties; requiring procedures, data collection, and reports; and providing an appropriation."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Montana Access to Civil Justice Act".

NEW SECTION. **Section 2. Purpose.** The purposes of [sections 1 through 5] are to:

(1) provide all Montanans with user-friendly information about Montana's civil law, courts, and legal system;

(2) provide state-level coordination to develop self-help legal resources, tools, information, and training materials on a statewide basis in a cost-effective manner emphasizing technology and volunteer services;

(3) facilitate the efficient use of judicial resources in civil court proceedings that involve self-represented litigants; and

(4) help make Montana's court system accessible regardless

of a person's financial means without guaranteeing a certain level of legal assistance or legal representation.

NEW SECTION. **Section 3. Definition.** As used in [sections 1 through 5], the following definitions apply:

(1) "program" means the self-help law program established in [section 4]; and

(2) "self-represented litigant" means a person involved in the civil legal system without direct representation by an attorney.

NEW SECTION. **Section 4. Self-help law program -- staff -- -- duties -- coordination.** (1) The supreme court shall establish and provide staff within available appropriations for a self-help law program.

(2) Program staff are subject to the judicial branch personnel and pay plan provided for in 3-1-130.

(3) The program shall provide statewide coordination to:

(a) develop, maintain, and make available to self-represented litigants legal forms and instructions about the use of the forms in civil legal proceedings in Montana's courts;

(b) develop, update, and provide information and training materials for judges, clerks of court, other court officers, judicial branch employees, and volunteers about self-help legal resources and how to assist self-represented litigants in a manner that is impartial, facilitates effective and efficient court operations, and does not constitute providing legal advice

or legal representation; and

(c) establish and maintain multimedia materials, including a web site and local computer or work stations, that provide self-represented litigants with access to information about Montana's civil laws, courts, rules, legal forms, and available legal resources.

(4) The program shall coordinate and cooperate with other access to justice efforts, such as initiatives by state or local bar associations, non-profit legal services organizations, pro bono attorney networks, volunteer programs, and other public or private efforts that are consistent with the purposes of [sections 1 through 5].

**NEW SECTION. Section 5. Procedures -- data -- reports. (1)**

The supreme court shall establish procedures for the delivery of state law library and court-based program services.

(2) The supreme court shall ensure that relevant and detailed data concerning program costs and services are recorded, collected, reported, and used for program planning.

(3) The supreme court shall report to the law and justice interim committee established in 5-5-226 and each regular legislative session to house appropriations and senate finance and claims committees concerning the program's status. Each report shall include the status of program funding and services and any strategic plan changes, implementation problems, or recommendations to the legislature.

As of: March 15, 2006 (10:50am)

NEW SECTION.    **Section 6. Appropriation.** The following money is appropriated from the general fund to the supreme court for the purposes of [sections 1 through 5]:

Fiscal year 2007 \$ \_\_\_\_\_

Fiscal year 2008

**NEW SECTION.    Section 7.    {standard} Codification**

**instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 3, chapter 1, and the provisions of Title 3, chapter 1, apply to [sections 1 through 5].

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